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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,956	07/11/2003	Nicole Paquette	1627P01US01	2143

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EXAMINER

OLSZEWSKI, JOAN M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,956

Applicant(s)

PAQUETTE, NICOLE

Examiner

Joan M. Olszewski

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24 is/are allowed.
- 6) ☐ Claim(s) 1-6,9-23 is/are rejected.
- 7) ☒ Claim(s) 7 and 8 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because the term "means" appears in line 14. Correction is required. See MPEP § 608.01(b).

Claim Objections

Claim 14 is objected to because of the following informalities: line 21 after the word "therethrough" a period is required. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 17 recites the limitation "said saucer-shaped platform" in line 1. There is insufficient antecedent basis for this limitation in the claim. Since claim 17 depends from claim 1 currently it is suggested that it should instead depend from claim 16 in order to correct this rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9, 10, 16, 17, 19 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Dalton (US Patent 1,840,024).

Regarding Claims 1-5, 9, 10, 16, 17, 19 and 23, Dalton discloses a device (Figure 1) capable of collecting and retaining waste material such as waste feed, the apparatus comprising: a saucer-shaped platform (31) including at least one low point; an opening located within the at least one low point (32); a hollow support tube (30) at the low point having a first and second end (Figure 2) including a passageway between the first and second ends; a collection container (20) located at the second end (Figure 2); wherein a path from the platform to the collection container via the passageway is substantially unobstructed so as to allow flow of material such as waste feed therethrough; a base (10) located at the second end, the base having means, a door (11) for accessing the collection container; the base fixed to the ground by fixing means (6); re-claim 9, the collection container can be replaced or emptied (page 2, lines 15-16); re-claim 17, the saucer-shaped platform has a diameter sufficient to prevent grasping of an edge of the saucer-shaped platform by animals; re-claim 19, wherein the platform includes a support (36) capable of supporting a bird feeder; and re-claim 23, wherein a decorative element is attached to the apparatus (7).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dalton.

Regarding Claim 18, Dalton discloses all the claimed features as discussed in the rejection above except for specifically stating the diameter of the platform is at least two feet. However, the diameter is considered to be an obvious design choice and further this dimension would be varied dependent upon space requirements of the entire assembled unit and considered well within the level of skill of one in the art.

Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalton (US Patent 1,840,024) in view of LeBlanc et al. (US Patent 5,507,242).

Regarding Claim 11, Dalton discloses all the claimed features as discussed in the rejection above except for wherein the hollow support tube is a hollow telescopic support tube including multiple encasing sections, height adjustable via expanding and retracting the multiple sections with retention pegs for maintaining the multiple encasing sections in an extended position and the apparatus in a upright position. However, LeBlanc et al. teaches the use of a hollow height adjustable support tube (Figure 2), having expanding and retracting multiple sections (18A-C) retained by clamp locks (44).

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Further, it would have been obvious to substitute pegs for the clamp locks since both are considered to be art recognized equivalents.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Dalton to include the hollow height adjustable multiple sections secured by clamp locks as taught by LeBlanc et al. in order to allow for refilling and cleaning of the device. Further, the use of pegs instead of clamp locks to retain the position of the various sections would have been obvious since both are considered equivalent functioning structures. Also, peg type locks are well known on extensible vacuum cleaner suction wands.

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalton in view of Luedecke (US Patent 5,924,425).

Regarding Claim 21, Dalton discloses all the claimed features as discussed above except for wherein the cover is attached to the platform by multiple rigid stems. However, Luedecke teaches the use of a cover (22) attached to the platform (51) by using the rigid stems which contain mounting holes (46).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Dalton by utilizing a cover attached to a platform by locating rigid stems as taught by Luedecke in order to provide protection from the weather.

Regarding Claim 22, the combination of Dalton as combined with Luedecke would reduce snow accumulation on the platform (Luedecke Figure 1).

Claim Rejections - 35 USC § 102

Claim 1-3, 5, 6, 9, 10, 16, 17 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilmanns (US Patent 1,807,079) and as best understood in light of the 35 USC 112 second paragraph rejection above.

Regarding Claims 1-3, 5, 6, 9, 10, 16, 17 and 19-21, Wilmanns discloses a device capable of collecting and retaining waste material such as feed waste comprising: a platform having at least one low point with an opening (Figure 2); a support (11) at the low point having a first and second end and including a passageway between the first and second ends wherein a path from the platform to the collection container via the passageway is substantially unobstructed so as to allow flow of waste material therethrough which would include waste feed; a collection container (44) located at the second end (Figure 5); wherein a base (42) is located at the second end (page 2, lines 46-48); the base having means for accessing the collection container (Figure 6); the base is fixed to the ground by fixing means (13); re-claim 6, wherein the base is a bottomless base (Figure 6); re-claim 9, wherein the collection container can be replaced or emptied (page 2, lines 50-51); re-claim 10, wherein the support is a hollow tube (page 2, line 48); re-claim 16, wherein the platform is a saucer-shaped platform (Figure 2); re-claim 17, wherein the saucer-shaped platform has a diameter sufficient to prevent grasping of a edge of the saucer-shaped platform by animals (Figure 2); re-claim 19, wherein the platform includes a support (38) which would be capable of supporting a bird feeder; re-claim 20, wherein a cover is attached to the platform (Figure 3); re-claim 21, wherein the cover is attached to the platform by multiple rigid stems (39).

Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilmanns in view of LeBlanc et al. (US Patent 5,507,242).

Regarding Claim 11, Wilmanns discloses all the claimed features as discussed in the rejection above except for wherein the hollow support tube is a hollow telescopic support tube including multiple encasing sections, height adjustable via expanding and retracting the multiple sections with retention pegs for maintaining the multiple encasing sections in an extended position and the apparatus in a upright position. However, LeBlanc et al. teaches the use of a hollow height adjustable support tube (Figure 2), having expanding and retracting multiple sections (18A-C) retained by clamp locks (44). Further, it would have been obvious to substitute pegs for the clamp locks since both are considered to be art recognized equivalents.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Wilmanns to include the hollow height adjustable multiple sections secured by clamp locks as taught by LeBlanc et al. in order to allow for refilling and cleaning of the device. Further, the use of pegs instead of clamp locks to retain the position of the various sections would have been obvious since both are considered equivalent functioning structures. Also, peg type locks are well known on extensible vacuum cleaner suction wands.

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Regarding Claim 18, Wilmanns discloses all the claimed features as discussed in the rejection above except for specifically stating the diameter of the platform is at least two feet. However, the diameter is considered to be an obvious design choice and further this dimension would be varied dependent upon space requirements of the entire assembled unit and considered well within the level of skill of one in the art

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilmanns in view of Luedecke (US Patent 5,924,425).

Regarding Claim 21, Wilmanns discloses all the claimed features as discussed above except for wherein the cover is attached to the platform by multiple rigid stems. However, Luedecke teaches the use of a cover (22) attached to the platform (51) by using the rigid stems which contain mounting holes (46).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Wilmanns by utilizing a cover attached to a platform by locating rigid stems as taught by Luedecke in order to provide protection from the weather.

Regarding Claim 22, the combination of Wilmanns as combined with Luedecke would reduce snow accumulation on the platform (Luedecke Figure 1).

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Allowable Subject Matter

Claims 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 24 is allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Thompson (1,370,167), Fleming (1,646,086), Savery (1,662,171), Fleming (1,738,566), Dalton (1,831,410), Baylis (1,908,279), Kosvich (2,028,612), McDonald (2,114,027), Peart (2,440,783), Simpson (D222,623), Trail (4,181,612), Suzuki (5,282,765), Deagan (5,749,316), Luedecke (6,186,355), Cote 6,543,383), Canby (6360690) and Schrader (6,626,129).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joan M. Olszewski whose telephone number is 703-305-2693. The examiner can normally be reached on Monday-Friday (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Joan M. Olszewski
Patent Examiner
Art Unit 3643

JMO



PETER M. POON
SUPERVISORY PATENT EXAMINER

3/19/04